IN THE SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

October Term, 1971

Supreme Court, U.S.
FILED
MAY 4 1972
E. ROBERT SEAVER, CLERK

No. 6833

TOMACITA NEGRON, by her next friend, JONATHAN WEISS,

Petitioner,

- against -

JOHN A. WALLACE, individually and as Director of Probation of the City of New York; ARTHUR B. COLE, individually and as Director of Institutional Services of the Office of Probation of the City of New York; and RICHARD JOHNSON, individually and as Director of the Manida Juvenile Center,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Brief for Respondents in Opposition

LAWRENCE N. MARCUS, Esq.
Counsel for Respondents
Judicial Conference of the
State of New York
270 Broadway
New York, New York 10007

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 6833

TOMACITA NEGRON, by her next friend, JONATHAN WEISS,

Petitioner,

-against-

JOHN A. WALLACE, individually and as Director of Probation of the City of New York; ARTHUR B. COLE, individually and as Director of Institutional Services of the Office of Probation of the City of New York; and RICHARD JOHNSON, individually and as Director of the Manida Juvenile Center,

Respondents.

ON PETITION FOR WRIT OF CERTORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Brief for Respondents in Opposition

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 5833

JOANNA NEGRON, by her next friend,
JONATHAN WEISS,

Petitioner,

-against-

JOHN A. MALLACE, individually and as
Director of Probation of the City of
New York; ARTHUR B. COLE, individually
and as Director of Institutional Serv-
ices of the Office of Probation of the
City of New York; and RICHARD JOHNSON,
individually and as Director of the
Manida Juvenile Center,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Brief for Respondents in Opposition

OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit is reported at 436 F. 2d 1139.

The opinion of the District Court for the Southern District of New York is not reported and is included in petitioner's appendix.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

New York Family Court Act §732
(see petition for certiorari)

New York Family Court Act §741
(see petition for certiorari)

New York Family Court Act §241

Findings and purpose

This act declares that minors have a right to the assistance of Counsel of their own choosing or of law guardians in neglect proceedings under article three and in proceedings to determine juvenile delinquency and whether a person is in need of supervision under article seven. This declaration is based on a finding

that Counsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition. This part establishes a system of law guardians to realize these purposes.

New York Family Court Act §249

Appointment of law guardian

At the request of a minor in a proceeding under articles three or seven or on request of a parent or person legally responsible for the minor's care, the family court shall appoint a law guardian to represent such minor if independent legal representation is not available to the minor by reason of inability to pay other counsel or other circumstances. The family court on its own motion may make such appointment.

28 U.S.C. §1343 (see petition for certiorari)

42 U.S.C. §1983 (see petition for certiorari)

QUESTION PRESENTED

Should a writ of certiorari be granted in this case absent a clear showing that the federal question decided by the Court below is in conflict with applicable decisions of this court.

STATEMENT OF THE CASE

This suit was initiated by Order to Show Cause in the United States District Court for the Southern District of New York under 42 U.S.C. §1983, 28 U.S.C. §§1343(3) and (4), and Rules 65 and 57 of the Federal Rules of Civil Procedure. Petitioner sought relief against the enforcement of rules or practices of Manida Juvenile Center which allegedly violated her right to counsel. This relief was sought in the form of a preliminary injunction.

The district court denied plaintiff's request for a preliminary injunction insofar as it requested relief against the enforcement of the rules or practices of Manida Juvenile Center (1) preventing consultation between an inmate and his attorney when the attorney has not filed a notice of appearance or obtained the permission of the family court or the inmate's parents; (2) preventing consultation between an inmate and his attorney unless an appointment has been made in advance; and (3) preventing an inmate from telephoning his attorney when he desires representation or consultation. The court further decreed that petitioner's request for damages be denied.

However, respondents were enjoined from denying to petitioner her constitutional right to consult privately with counsel of her choice while detained in

I N D E X

	Page
Opinions below.....	2
Jurisdiction.....	2
Statutory provisions involved..	2
Question presented.....	3
Statement of the case.....	4
Argument.....	7
The decision of the Court of Appeals is in keeping with recent opinions of this Court.	
Conclusion.....	11

family court judge or petitioner's mother.

Mr. Weiss was also advised that if he filed a notice of appearance in the action, he would be allowed to visit with petitioner.

ARGUMENT

REASONS FOR DENYING THE WRIT

THE DECISION OF THE COURT OF APPEALS IS IN KEEPING WITH RECENT OPINIONS OF THIS COURT

The Court of Appeals for the Second Circuit, in this case Negron v. Wallace, 436 F 2d 1139 has held that a "civil rights" action may be brought in federal court only if no adequate remedy exists in the state system. The court, through Circuit Judge Friendly, recognized the burden imposed on federal judges by many of these actions and the abvasive effect on federal-state relations. The court felt that suits for declaratory or injunctive relief under the civil rights statute could be considered in state courts with ultimate review by the Supreme Court of the United States, if required.

The federal courts have been refusing to interfere in state proceedings absent a showing of exceptional circumstances. This is necessay to maintain the integrity of the state court systems and in no way relieves the duty of the federal courts to redress the deprivation of constitutional guar-

antees, but rather seeks to establish a better working relationship between the state and federal systems that will benefit the litigant.

It has recently been held by this court in the companion cases of Younger v. Harris, _____ U.S. _____, 27 L ed 2d 669 and Samuels v. Mackell, _____ U.S. _____, 27 L ed 2d 688 (both decided February 23, 1970) that before the federal courts act to enjoin state criminal prosecutions, a defendant must show exceptional circumstances of great and irreparable harm.

Extending the application of these cases to juvenile proceedings it may be said that it would be indeed intrusive for the federal courts to intervene during the pendency of petitioner's trial in Family Court, as was attempted or before petitioner has exhausted her state appeals.

No facts were presented by petitioner that warranted federal intervention in this case. The Court of Appeals found this to be an unnecessary action stating that "a case like this, where the need for action by any court on the point that ignited the controversy has disappeared even before the suit was brought and where problems for the future, if there are any, can in all probability be resolved by calm discussions with state officials in the absence of any litigation whatsoever." (at p. 1142)

Petitioner, by her next friend, Jonathan Weiss, brought this action in the Federal District Court for the Southern District of New York seeking relief against the enforcement of rules or practices of Manida Juvenile Center which allegedly violated petitioner's right to counsel. He brought this action without first trying to obtain the written permission to see petitioner of either a family court judge or petitioner's mother, or filing a notice of appearance in the family court action, as was suggested to him by respondents. Mr. Weiss discovered of petitioner's detention on Friday, October 31, 1969, made application to the federal district court by order to show cause, on Monday, November 3, 1969 and substituted himself as attorney by filing a notice of appearance in family court on November 6, 1969. Upon this substitution the instant action become moot, since he was then permitted to confer with petitioner without unreasonable restrictions and in complete privacy.

There is indeed no showing here of exceptional circumstances of great and irreparable harm that would prompt federal intervention. Petitioner's claim of the deprivation of her right to counsel does not constitute a violation of the Federal Civil Rights Act. There is no showing that petitioner or others of her alleged class have been discriminated against by respondents acting under color of any state law or pursuant to any custom or

usage having the force of law. There is no showing that inmates in other facilities are treated any differently. In fact, the Office of Probation and Manida Juvenile Center have conducted themselves pursuant to statute and in fact never deprived petitioner of counsel.

Mr. Weiss has alleged that since he had represented petitioner in previous petitions he should have been notified by respondents regarding petitioner's detention. He alleges that petitioner requested his representation. However, he offered no proof in support of this allegation.

A Legal Aid Law Guardian was appointed pursuant to §249 of the Family Court Act to represent petitioner in the proceeding instituted by her mother in the Family Court to adjudicate the petitioner a Person in Need of Supervision. Petitioner alleges that the practices of the respondents deny her the right secured by In re Gault, 387 US 1 (1967). This court in that case held "that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parent must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child." (at p.

38). This Court held such after discussing and approving the New York Family Court Act §241 and §741 providing that the Court advise a juvenile in a delinquency, supervision or neglect proceeding of his right to counsel of his own choosing or to a law guardian assigned by the court. The Family Court in the present action acted accordingly, thereby insuring petitioner of all her constitutional rights, including her right to counsel as provided by state law and federal law.

Petitioner has alleged that respondents' actions caused her to have inadequate representation and that the Law Guardian presented none of the defenses available to petitioner in the Family Court proceeding. However, Mr. Weiss was formally substituted, could have presented the defenses and in fact has appealed on behalf of petitioner from the Family Court determination. The respondents cannot be held responsible for the adverse determination of the Family Court, nor have they at any time precluded petitioner from seeking her judicial remedies. Respondents merely sought to protect petitioner as her custodian. Petitioner's remedy is appeal from the Family Court determination and in fact an appeal is pending.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should

be denied.

Respectfully submitted,

Lawrence N. Marcus
Counsel for Respondents,
Judicial Conference of the
State of New York
270 Broadway
New York, N.Y. 10007